

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3
4 IN RE: VALSARTAN PRODUCTS
5 LIABILITY LITIGATION

CIVIL ACTION NUMBER:

19-md-02875

6 DISCOVERY CONFERENCE VIA
7 ZOOM

8 Mitchell H. Cohen Building & U.S. Courthouse
9 4th & Cooper Streets
10 Camden, New Jersey 08101
11 August 23, 2023
12 Commencing at 4:06 p.m.

B E F O R E:

THE HONORABLE THOMAS I. VANASKIE (RET.)
UNITED STATES SPECIAL MASTER

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25 Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

A P P E A R A N C E S (Continued):

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For the Wholesaler Defendants and AmerisourceBergen

ALSO PRESENT:

LORETTA SMITH, ESQUIRE
Judicial Law Clerk to The Honorable Robert B. Kugler
Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held via Zoom before SPECIAL MASTER
2 THOMAS I. VANASKIE at 4:06 p.m.)

3 SPECIAL MASTER VANASKIE: Why don't we begin. We'll
4 start our discovery conference today, July 23rd (sic).

5 I think there's only one dispute that we need to
6 discuss today, but you can correct me if I'm wrong on that.
7 And as I understand it -- and I see Loretta is now here;
8 great, great, great -- the dispute concerns discovery from the
9 third-party plaintiffs sought by the wholesaler defendants.

10 And who will be addressing this issue for the
11 wholesalers?

12 MR. GEOPPINGER: Good afternoon, Judge Vanaskie.
13 Jeff Geoppinger on behalf of the wholesalers. I'll be
14 addressing this issue.

15 THE COURT: Good afternoon, Mr. Geoppinger.

16 And who will be addressing the issue on behalf of the
17 TPPs?

18 MS. BURROWS: Good afternoon, Your Honor. Stacy
19 Burrows will be addressing the matter on behalf of the TPP
20 plaintiffs.

21 THE COURT: All right. Thank you, Ms. Burrows.

22 All right. Why don't we hear from you first,
23 Mr. Geoppinger.

24 MR. GEOPPINGER: Sure. Your Honor, as you probably
25 saw in our letters, we've met and conferred. We've come up

1 with a schedule. The wholesalers have agreed to the discovery
2 the plaintiffs seek from us and dates for all of that. We are
3 just seeking to include in that very same schedule dates for
4 discovery from the third-party plaintiff -- excuse me,
5 third-party payor plaintiffs. The same discovery they're
6 asking of us, requests for production, 30(b)(6), custodial
7 discovery, all the same stuff, and we're proposing to include
8 it in the same scheduling order that governs the discovery
9 that we're going to be providing on those matters for losartan
10 and irbesartan. This is a losartan and irbesartan mainly
11 issue with respect to this schedule, Your Honor.

12 I don't think it's a real controversial ask. It's
13 pretty standard to put this kind of stuff in a scheduling
14 order together. Do it one time.

15 The plaintiffs have -- I think are agreeable to the
16 discovery, they just think that we need to coordinate it with
17 the other defendants.

18 Now, we have coordinated, obviously, among the
19 wholesalers. And the other defendants are only manufacturers
20 because the pharmacies have not been sued by the TPPs. So as
21 far as downstream discovery, we're the only show in town.

22 So I appreciate and we appreciate the benefits of
23 coordination, but in this case, it's only coming from us.
24 There's nothing in the Rules of Civil Procedure, the orders of
25 the Court that require us to coordinate with the

1 manufacturers. I'm sure they'll want to do something at some
2 point, but I think we should be able to proceed with our
3 discovery here to the third-party payor plaintiffs on our own,
4 essentially, because, A, it's just going to slow things down.
5 And we've heard many, many times that we need to get moving on
6 this stuff. In fact, that's why we're here today. The
7 plaintiffs in April said, let's get moving on this, and that's
8 what we're trying to do.

9 B, we open ourselves up to untimeliness arguments.
10 The Court is aware we faced that recently rather vigorously.
11 We don't want to be in that position again.

12 And another big reason is, Your Honor, is this is
13 stuff that's specific to the wholesalers. It really doesn't
14 have anything to do with the manufacturers. They'll have
15 their own requests, I'm sure. But this is the kind of
16 discovery that he can put in a schedule and that these
17 plaintiffs can start answering now without -- no matter when
18 the manufacturers serve their discovery.

19 And, Your Honor, if in fact there's some overlap, I'm
20 sure that the TPPs will, you know -- can and will reference
21 discovery previously produced or we would be certainly
22 amenable to discussing coordination if there is overlap.

23 But the point, Your Honor, is we have put in a
24 schedule. We're going to enter to a schedule. Let's get
25 moving on it. Let's put in the schedule, do it all at one

1 time. We'd like to have those dates.

2 There's also been a suggestion that the schedule
3 isn't necessary or appropriate, because we need to seek it --
4 seek discovery from the TPP plaintiffs via fact sheet. That's
5 just not how this has worked.

6 The Court has entered several orders that have
7 allowed requests for production to TPP plaintiffs separate and
8 apart from fact sheets. They've entered orders, including the
9 one we're going to enter -- you know, they're asking to enter
10 today that allows the plaintiffs to ask us RFPs separate and
11 apart from the fact sheet.

12 So there's no requirement that the fact sheet is the
13 end-all-be-all means of which we can obtain discovery. And if
14 they want to negotiate one, certainly we're open to doing
15 that. But we'd also like the opportunity to essentially --
16 like I said, it's the same schedule. Everything they asked of
17 us, we're asking that we have dates for going and asking for
18 the same stuff from them.

19 THE COURT: All right. Thank you.

20 Ms. Burrows?

21 MS. BURROWS: Yes, Your Honor. Thank you. I think
22 I'll go in reverse order, if I can.

23 SPECIAL MASTER VANASKIE: Very well.

24 MS. BURROWS: So the plaintiffs' position has never
25 been that the wholesaler defendants aren't entitled to

1 discovery. We absolutely believe that discovery is necessary,
2 and the TPP plaintiffs will provide it. The question is which
3 is the right vehicle, and what is the right time.

4 We have proposed two different vehicle mechanisms, if
5 you will, for the defendants to first coordinate amongst
6 themselves, which I will state for the record that it appears
7 that the manufacturing defendants did reach out to some of the
8 co-lead counsel this week also requesting potentially a
9 discovery to be taken of the TPPs related to losartan or
10 irbesartan.

11 So the question is the vehicle. Are we going to move
12 forward piecemeal with each defendant serving RFPs that could
13 be duplicative with crossover deadlines. And the question is,
14 how do they get that discovery they seek.

15 We've proposed two options.

16 First of all, let's talk about an amended fact sheet.
17 That's exactly what we did in the personal injury claims. The
18 defendants came to the table, asked for amended plaintiffs
19 fact sheet. Those were negotiated, agreed upon. Those
20 plaintiffs are currently revising their answers to the
21 plaintiffs fact sheet as amended and providing documents.

22 The second question is after the plaintiffs fact
23 sheets have been amended and those documents were produced,
24 then what's the next level of discovery, and how are they
25 going to go about doing that, Your Honor.

1 We have said all along you're entitled to discovery.
2 Let's talk about a reasonable discovery; let's talk about it
3 being cooperative; let's talk about it being efficient.

4 What I will say, and I think that this was somewhat
5 overlooked, we also mentioned that we thought your recent
6 ruling on what discovery the wholesaler defendants could take
7 related to valsartan could be very helpful.

8 As my opposing counsel stated, there was two defenses
9 that were raised in that briefing, if you will, Your Honor.
10 You recently issued an order on August 11th, your Special
11 Master Order 82, so I know you're very familiar with the
12 issue.

13 First was the timeliness issue. As you may recall,
14 Your Honor, you did appreciate the plaintiffs' concerns about
15 timeliness, but you ultimately looked at the actual requests
16 that were being made.

17 If I were to say to you, Your Honor, today most of
18 the requests that have been proposed are nearly identical to
19 the ones you've already ruled would be unduly burdensome or
20 not quite sufficient to even give a reasonable answer, and
21 thus you denied those requests for discovery. We're at a very
22 preliminary stage. Right now the defendants need to take the
23 advice from the Court, understanding that you recently ruled
24 on very similar issues, come to the table, let's decide how an
25 amended plaintiffs fact sheet can be coordinated, let the

1 plaintiffs do their job in answering those fact sheets, giving
2 that discovery to the defendants, and if there's additional
3 discovery needed, we address that. We have a meet and confer.
4 We talk about what you found would be a reasonable discovery
5 request within the thresholds of not overly burdensome and
6 specific to the needs of the case.

7 That's not where we're at, Your Honor. If you were
8 to issue an order for the plaintiffs to issue discovery right
9 now, we're at ad hoc. We're in a place where the proposed
10 requests are not consistent with your order. They were
11 submitted to us long before your order was issued. And we're
12 at a place where we haven't even done amended fact sheets.

13 So like I've said, Your Honor, the plaintiffs are in
14 a position where we believe the wholesaler defendants have a
15 right to discovery. That's not the request here, and that's
16 not -- we're not trying to stall all discovery. We just want
17 it to be done collectively, reasonably and efficiently, Your
18 Honor. We think that the proposals we made are the right
19 approach for the Court.

20 THE COURT: Before we hear from Mr. Geoppinger, do we
21 have anybody who wants to address this issue on behalf of the
22 manufacturer defendants.

23 MS. LOCKARD: Your Honor, this is Victoria Lockard.
24 You know, I do agree with Mr. Geoppinger in a sense
25 that I don't know that we necessarily have to coordinate by

1 the rules or any precedent here. We're happy to do so. We
2 don't -- you know, we don't intend to delay in getting an
3 agreement on what the scope of discovery should be for
4 manufacturers. We do feel like we need to move forward on
5 that.

6 But if, you know, Mr. Geoppinger and the wholesalers
7 have prepared their discovery and are ready to move, then from
8 our perspective, you know, we sort of take a neutral position
9 in terms of whether we must coordinate or not.

10 From our interests, we do want to proceed with
11 discovery on behalf of the manufacturers against the economic
12 loss and the class reps, and so I know we're in the process of
13 drafting that. And once we are able to share those very soon
14 with plaintiffs, we'll be in a position to have a more
15 meaningful meet and confer.

16 THE COURT: Thank you. Thank you, Ms. Lockard.

17 Mr. Geoppinger, anything you'd like to add?

18 MR. GEOPPINGER: Yes. Thank you, Your Honor.

19 Basically we're asking for a schedule right now,
20 Judge. I mean, that's it. Ms. Burrows is talking about
21 the -- you know, the substance of the discovery. Well, the
22 schedule has all kinds of stuff built in there for it for us
23 to go back and forth on that and to address it with you if
24 need be.

25 Today I am asking for a schedule. It's the exact

1 same schedule that the plaintiffs are asking you to enter with
2 respect to the wholesaler defendants. We don't need two
3 different procedures and two different schedules for the
4 discovery for the parties here. We want the same thing. So
5 that's really all this is. Can we please have a schedule that
6 involves dates by which the plaintiffs have to engage in
7 discovery. That's all we want.

8 THE COURT: All right. Thank you.

9 Ms. Burrows?

10 MS. BURROWS: Only briefly, Your Honor.

11 I would note that the schedule that we've asked for
12 you to put into place, that has been agreed upon and
13 negotiated between the parties, is related to the Case
14 Management Order 32. That was entered in on April 21, 2023.
15 We have now spent months negotiating, going back and figuring
16 out what the proposed schedule should be to be consistent with
17 that order.

18 I think that in all reality we need time to set up
19 what a reasonable schedule would be so the plaintiffs can
20 reasonably comply with that. And we offered that. We
21 offered, please send us a plaintiffs fact sheet that's been
22 redlined amended so that we can see what your requests are in
23 the plaintiffs fact sheet, we can get that into place, and
24 then we can talk about the next level of discovery, Your
25 Honor.

1 I think to suggest that we decided a couple weeks ago
2 we want discovery and we want it meshed into the order that's
3 required by CMO 32 that was issued months ago, I think it's
4 premature on the defendants' part, Your Honor. I think what
5 the plaintiffs have offered is the reasonable approach.

6 THE COURT: All right. Thank you.

7 I do believe that it is appropriate to put in place a
8 schedule now and a schedule that swings both ways for the
9 wholesaler defendants and for the plaintiffs in this case.

10 I'm inclined to issue an order that adopts the
11 deadlines that have been proposed by the wholesaler defendants
12 in their Exhibit A to their agenda letter. And that also
13 includes deadlines agreed upon for discovery from the
14 wholesaler defendants. And it's not that I'm inclined, I
15 think that's what should happen here. And then we can get
16 moving. And if things need to be adjusted, then they can be
17 adjusted, but we're in this limbo right now of not getting the
18 matter on a schedule.

19 I know I could direct that you meet and confer and
20 get back to me, but I think it would be better now to put in
21 place a schedule.

22 So, Mr. Geoppinger, what I'd ask is you send to me a
23 proposed order that includes the deadlines in Exhibit A to
24 your agenda letter, and we'll issue that as a scheduling order
25 for the wholesaler part of this case, the wholesalers and the

1 TPPs.

2 Is that understandable?

3 MR. GEOPPINGER: Yes, Your Honor. Would you like
4 that in Word or PDF?

5 SPECIAL MASTER VANASKIE: I'd like it in Word in case
6 I want to make any changes.

7 And if there's any counters -- because what I have in
8 Exhibit A, Ms. Burrows, is that the plaintiffs will not
9 discuss or agree with respect to some of these proposed
10 deadlines. If you have a counter, I'd be happy to consider
11 it. That's why it would be helpful to get it in Word,
12 Mr. Geoppinger. And I could adjust some dates.

13 But right now I think it's more important that we get
14 in place a schedule, a schedule that is fair to both sides.
15 And I think it -- I think this will accomplish that.

16 And in terms of the other, the manufacturer
17 defendants, well, this should help in that respect.

18 Ms. Burrows?

19 MS. BURROWS: Your Honor, I think the plaintiffs
20 would like the opportunity to counter on some of the dates, so
21 I will submit that to you by separate email.

22 SPECIAL MASTER VANASKIE: That would be fine.

23 So what I'd ask, Mr. Geoppinger, is you can get this
24 to me promptly, certainly by the end of this week.

25 And if you could get back to me by next Wednesday

1 your counters, that would be great.

2 Okay. Anything else to discuss today?

3 MR. GEOPPINGER: Nothing from the wholesalers, Your
4 Honor.

5 MS. BURROWS: No, Your Honor, nothing for the
6 plaintiffs.

7 THE COURT: All right. Thank you all very much.
8 Take care.

9 (Proceedings concluded at 4:21 p.m.)

10 I certify that the foregoing is a correct transcript
11 from the record of proceedings in the above-entitled matter.

12 /S/ Ann Marie Mitchell 24th day of August, 2023
13 Court Reporter/Transcriber Date

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